

Before the
Federal Communications Commission
Washington, D.C. 20554

FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

In the Matter of)

Schools and Libraries Universal Service)
Support Mechanism)

CC Docket No. 02-6

Comprehensive Review of the Universal Service)
Fund Management, Administration, and Oversight)

WC Docket No. 05-195

PETITION OF TW TELECOM INC.

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July 3, 2013

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PETITION OF TW TELECOM INC.

Pursuant to Section 1.1 of the Commission's rules,¹ tw telecom inc. ("tw telecom"), through its undersigned counsel, hereby submits this petition in the above-captioned dockets. As discussed herein, tw telecom requests that the Commission issue an order directing the Universal Service Administrative Company ("USAC") to complete its review of two long-pending E-Rate funding applications filed by the New York City Department of Education ("NYC DOE") and issue a funding commitment or denial within 30 days of the release of the order.

I. INTRODUCTION AND SUMMARY

Efficient implementation of the E-Rate program is critical to the achievement of the Commission's broadband agenda. The National Broadband Plan established the provision of 1 Gigabit per second ("Gbps") broadband Internet access service to schools, libraries, and other anchor institutions in every American community as one of the Commission's primary policy

¹ See 47 C.F.R. § 1.1 ("The Commission may on . . . petition of any interested party hold such proceedings as it may deem necessary from time to time in connection with the investigation of any matter which it has power to investigate under the law, or for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties or the formulation or amendment of its rules and regulations.").

goals.² Building on this goal, Commissioner Rosenworcel has called for every school in the country to have access to 1 Gbps broadband service per 1,000 students by the end of the decade.³ And most recently, President Obama announced the ConnectED initiative, with the goal of bringing next-generation broadband services to 99 percent of America's students.⁴ These goals cannot be achieved unless USAC rules on E-Rate funding applications in a timely manner and provides carriers with the transparency and predictability they need to participate fully in the E-Rate program.

tw telecom is a significant provider of E-Rate services. For example, pursuant to a multi-year contract, tw telecom provides 1 Gbps Ethernet Internet access services to NYC DOE, the largest public school system in the United States. NYC DOE received E-Rate funding for the purchase of these services for the 2010-2011 funding year. In that instance, the E-Rate program worked exactly as the Commission intended—"by helping to ensure that eligible schools and libraries actually obtain access to discounted telecommunications and information services."⁵

² "Connecting America: The National Broadband Plan," at 10 (Mar. 16, 2010) ("National Broadband Plan").

³ See "Remarks of Commissioner Jessica Rosenworcel, Washington Education Technology Policy Summit, at 4 (Washington, DC, Apr. 11, 2013), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0411/DOC-320122A1.pdf ("Commissioner Rosenworcel E-Rate 2.0 Remarks"); *see also* Press Release, "Rockefeller Calls for Major Expansion of E-Rate Program," Mar. 12, 2013, *available at* <http://www.rockefeller.senate.gov/public/index.cfm/press-releases?ID=8e1e04d2-d4f0-4ae0-aab8-736a2f566ea9> (last visited June 3, 2013) ("'By the end of this decade, I believe that every school in America should have one gigabit of Internet connectivity,' [Senator] Rockefeller said.").

⁴ See Press Release, The White House, "President Obama Unveils ConnectED Initiative to Bring America's Students into Digital Age," June 6, 2013, *available at* <http://www.whitehouse.gov/the-press-office/2013/06/06/president-obama-unveils-connected-initiative-bring-america-s-students-di> (last visited June 27, 2013).

⁵ *Bishop Perry Middle Sch.*, Order, 21 FCC Rcd. 5316, ¶ 2 (2006) ("*Bishop Perry Order*").

Unfortunately, the program has not worked as intended for 1 Gbps broadband services tw telecom has provided to NYC DOE after funding year 2010-2011. In particular, NYC DOE has not received a USAC funding commitment decision awarding or denying its applications for E-Rate funding for those services for the 2011-2012 and 2012-2013 funding years. Application No. 821325 (for 2011-2012)⁶ has been pending for more than two years and Application No. 875253 (for 2012-2013)⁷ has been pending for more than one year. Under the contract between the parties, tw telecom cannot recover the unpaid discounted portion of the cost of services provided directly from NYC DOE unless and until USAC issues a written decision denying or reducing the requested funding. In the meantime, tw telecom must incur the vast majority of the cost of providing broadband to the largest public school system in the country.

USAC's failure to timely complete its review of NYC DOE Application Nos. 821325 and 875253 (collectively, the "Applications") undermines the Commission's promotion of broadband Internet access service to schools, libraries, and other anchor institutions. It does so by discouraging tw telecom, and other similarly-situated firms that observe tw telecom's experience, from participating in the E-Rate program in the future.

More generally, USAC's failure to make a decision is simply bad government. Service providers that seek to provide broadband Internet access pursuant to the E-Rate program have a right to timely decisions as to whether the services they provide will be subsidized. USAC's failure to act in a timely manner undermines its credibility and effectiveness as a government-controlled corporation created for the purpose of implementing a key federal policy.

⁶ The Funding Request Number ("FRN") associated with Application No. 821325 (for 2011-2012) is 2237088.

⁷ The FRN associated with Application No. 875253 (for 2012-2013) is 2389503.

Accordingly, the Commission should order USAC to complete its review of these Applications and issue an award or denial within 30 days of the release of the order. As discussed below, there is no question that the Commission has the oversight authority to take such action. Otherwise, USAC will be free to spend *years* reviewing individual funding applications, thereby preventing eligible schools and libraries from realizing the intended benefits of the E-Rate program and undermining USAC's effectiveness as the program administrator.

II. BACKGROUND

A. USAC Has Failed To Timely Grant Or Deny The E-Rate Funding Applications Of The NYC DOE, A Customer Of tw telecom.

As mentioned above, for the 2010-2011 funding year, the E-Rate program worked as intended for NYC DOE as a funding recipient and for tw telecom as one of its service providers: (1) tw telecom provided E-Rate eligible broadband services (*i.e.*, 1 Gbps Ethernet Internet access services) to NYC DOE; (2) NYC DOE applied for E-Rate funding to subsidize the cost of those services; (3) USAC issued the relevant Funding Commitment Decision Letter ("FCDL") in December 2010; (4) NYC DOE paid the non-discounted portion of the cost of the services provided; and (5) tw telecom successfully obtained reimbursement from USAC for the discounted portion of the cost of the services provided in July 2011.⁸

After USAC issued the relevant FCDL for the 2010-2011 funding year, tw telecom entered into a multi-year contract with NYC DOE to provide E-Rate eligible broadband services (*i.e.*, 1 Gbps Ethernet Internet access services) for the 2011-2012, 2012-2013, and 2013-2014

⁸ See Declaration of Pamela Quade on Behalf of tw telecom inc. ¶ 4 (dated July 1, 2013) ("Quade Declaration") (*attached hereto* as "Attachment A").

funding years.⁹ NYC DOE then timely applied for E-Rate funding to subsidize the cost of those services for each of those funding years,¹⁰ and tw telecom began providing service pursuant to the multi-year contract on July 1, 2011.¹¹ USAC has not, however, issued FCDLs awarding or denying the relevant NYC DOE E-Rate funding applications for the 2011-2012 and 2012-2013 funding years. The former application has been pending since March 2011 and the latter application has been pending since March 2012.¹² As a consequence, tw telecom has been unable to seek reimbursement from USAC for the discounted portion of the cost of the services provided to the NYC DOE since July 1, 2011.¹³ As of June 20, 2013, that amount was approximately \$733,547.¹⁴ Nor can tw telecom seek payment directly from the NYC DOE for this amount. This is because, pursuant to the contract between the parties, tw telecom cannot seek collection from the NYC DOE for the discounted amount due until NYC DOE has received a written notice from USAC denying or reducing the requested funding.¹⁵

⁹ *See id.* ¶ 5.

¹⁰ *See id.* ¶ 6 (“NYC DOE timely filed its Form 471 application for E-Rate funding for the 2011-2012 funding year (Application No. 821325) with USAC on March 22, 2011. NYC DOE timely filed its Form 471 application for E-Rate funding for the 2012-2013 funding year (Application No. 875253) on March 16, 2012.”). NYC DOE timely filed the relevant Form 471 application for the 2013-2014 funding year (Application No. 926196) on March 11, 2013, and that application is pending.

¹¹ *See id.* ¶ 5.

¹² *See id.*

¹³ Consistent with the parties’ practice during the 2010-2011 funding year, tw telecom has been invoicing the NYC DOE for the full cost of the services provided, and the NYC DOE has been paying the non-discounted portion of the cost of the services provided. *See id.*

¹⁴ *See id.*

¹⁵ *See id.*

Since NYC DOE filed these Applications, tw telecom has maintained regular communication with the NYC DOE employee and NYC DOE consultant that prepared and submitted the Applications.¹⁶ According to these individuals, NYC DOE has cooperated fully with USAC's requests for information in connection with the Applications, but USAC has not provided a timetable for issuance of FCDLs to the NYC DOE.¹⁷ In late February 2013, tw telecom contacted USAC directly to inquire about the status of the Applications.¹⁸ USAC's Schools and Libraries Division responded via email as follows:

We are currently still working to complete our review of these forms so that you can receive a decision. This is not unusual and is not cause for concern. Unfortunately, we are not able to predict how much longer this will take. If any additional information is needed, the contact person that is listed on the forms will be contacted.¹⁹

In late May 2013, tw telecom contacted USAC again for an update on the status of its review of the Applications, but tw telecom did not receive a response from USAC to that inquiry.²⁰ As of June 28, 2013, the Applications were still in the "Initial Review" phase of USAC's application review process.²¹

B. The Commission Has The Authority To Direct USAC To Grant Or Deny E-Rate Funding Applications Within A Specified Time Period.

Section 254 of the Communications Act grants the Commission the authority to create

¹⁶ See *id.* ¶ 6.

¹⁷ See *id.*

¹⁸ See *id.* ¶ 7.

¹⁹ See *id.*

²⁰ See *id.* ¶ 8.

²¹ See *id.* ¶ 9.

and oversee federal subsidy funds, including the E-Rate program.²² USAC administers the universal service support mechanisms established by the Commission, including the E-Rate program, under the Commission's oversight and direction.²³ Indeed, as USAC itself has recognized, "[t]he Commission exercises oversight and control over USAC with regard to all facets of its existence."²⁴ USAC is required to "administer the USF consistent with the rules, orders and directives promulgated by the Commission."²⁵ And USAC must "follow such other guidance as the Commission or its duly authorized Bureaus or Offices may provide from time to time."²⁶ In short, USAC is accountable to the Commission,²⁷ and the Commission retains "ultimate responsibility for administration of the universal service support mechanisms."²⁸

The Commission has delegated to USAC "the responsibility of administering the

²² See 47 U.S.C. § 254(h)(1)(B).

²³ See, e.g., *Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan For Our Future*, Notice of Proposed Rulemaking, 25 FCC Rcd. 6872, ¶ 8 (2010) ("*E-Rate Broadband NPRM*") ("[T]he Universal Service Administrative Company . . . administers the E-Rate program under Commission direction."); *Schools & Libraries Universal Service Support Mechanism*, Fifth Report and Order, 19 FCC Rcd. 15808, ¶ 2 (2004) ("*Fifth R&O*") ("USAC administers the schools and libraries universal service support program under Commission oversight.").

²⁴ Universal Service Administrative Company Comments, WC Dkt. No. 05-195, at 46 (Nov. 13, 2008).

²⁵ Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company 1 (Sept. 9, 2008), *available at* <http://www.fcc.gov/omd/usac-mou.pdf> ("FCC-USAC MOU").

²⁶ *Id.*

²⁷ See, e.g., *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight et al.*, Report and Order, 22 FCC Rcd. 16372, ¶¶ 34-57 (2007) (establishing various performance measures and goals for USAC); FCC-USAC MOU at 1-15.

²⁸ *Changes to the Board of Directors of the Nat'l Exchange Carrier Ass'n et al.*, Third Report and Order in CC Dkt. No. 97-21, Fourth Order on Reconsideration in CC Dkt. No. 97-21 and Eight Order on Reconsideration in CC Dkt. No. 96-45, 13 FCC Rcd. 25058, ¶ 40 (1998).

application process for the [E-Rate program].”²⁹ Consistent with its oversight of USAC’s administration of this aspect of the E-Rate program, the Commission has repeatedly issued orders containing application processing directives to USAC. For example, the Commission, or the Wireline Competition Bureau on delegated authority, has repeatedly remanded USAC funding decisions and directed USAC to complete its review of the underlying applications and issue an award or denial within 60 days or 90 days of the remand.³⁰ In so doing, the Commission sought to ensure that the underlying applications were “resolved expeditiously”³¹ so that “eligible schools and libraries w[ould] be able to realize the intended benefits of the E-Rate program.”³²

III. ARGUMENT

A. **tw telecom’s Participation In The E-Rate Program Directly Advances The Commission’s Broadband Deployment Goals.**

One of the Commission’s primary broadband deployment goals is to “increas[e] the availability and use of broadband by children and our communities through the E-Rate program.”³³ The Commission established the E-Rate program pursuant to Congress’s directive

²⁹ *Bishop Perry Order* ¶ 4.

³⁰ See, e.g., *Bishop Perry Order* ¶ 1; *Kan-ed, Kan. Bd. of Regents*, Order, 21 FCC Rcd. 13658, ¶ 1 (2006) (“*Kan-ed Order*”); *Aiken Cnty. Pub. Sch., et al.*, Order, 22 FCC Rcd. 8735, ¶¶ 1-2 (2007) (“*Aiken County Order*”); *Brownsville Indep. Sch. Dist., et al.*, Order, 22 FCC Rcd. 6045, ¶ 1 (2007) (“*Brownsville Order*”); *Macomb Intermediate Sch. Dist.*, Order, 22 FCC Rcd. 8771, ¶ 1 (2007) (“*Macomb Order*”); *Bayfield Sch. Dist., et al.*, Order, 27 FCC Rcd. 15890, ¶ 4 (2012) (“*Bayfield Order*”); *Bastrop Indep. Sch. Dist.*, Order, 27 FCC Rcd. 15877, ¶ 2 (2012) (“*Bastrop Order*”).

³¹ See, e.g., *Bishop Perry Order* ¶ 1; *Kan-ed Order* ¶ 1; *Aiken County Order* ¶¶ 1-2; *Brownsville Order* ¶ 1; *Macomb Order* ¶ 1; *Bayfield Order* ¶ 4; *Bastrop Order* ¶ 2.

³² *Bishop Perry Order* ¶ 2.

³³ *E-Rate Broadband NPRM* ¶ 4.

in Section 254 of the Act to “enhance . . . access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms.”³⁴ The Commission has found that while broadband offers tremendous potential to improve education by “enabl[ing] new ways of teaching and learning,”³⁵ E-Rate recipients need to be able to “obtain higher bandwidth services that will support more advanced [educational] applications” and “enable more customized interactive online learning.”³⁶ The Commission has further found that improving connectivity to schools and libraries is imperative because “certain areas may depend on these anchor institutions to achieve the [National Broadband Plan’s] goal of affordable access to broadband of at least 1 gigabit per second in every community in the country.”³⁷ Moreover, President Obama has now identified the expansion of the E-Rate program to bring next-generation broadband services to 99 percent of America’s students as a top national priority.³⁸

Through its participation in the E-Rate program, tw telecom is directly advancing these broadband deployment goals. tw telecom has been a service provider for E-Rate program

³⁴ 47 U.S.C. § 254(h)(2)(A); *see also id.* § 254(b)(6) (“Elementary and secondary schools and classrooms . . . should have access to advanced telecommunications services . . .”).

³⁵ *E-Rate Broadband NPRM* ¶ 2.

³⁶ *Id.* ¶¶ 5-6; *see also* Commissioner Rosenworcel E-Rate 2.0 Remarks at 4 (“If you are a school and you want to run the most up-to-date educational materials, you need capacity. But a recent survey from Project Tomorrow found that only 15 percent of schools believe they have the bandwidth they need for instructional purposes.”).

³⁷ *Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan For Our Future*, Sixth Report and Order, 25 FCC Rcd. 18762, ¶ 1 (rel. Sept. 28, 2010) (“*E-Rate Broadband Order*”); *see also* Commissioner Rosenworcel E-Rate 2.0 Remarks at 4 (“I think Gigabit to anchor institutions like schools and libraries is the ticket to Gigabit cites, and the ticket to digital education and economic growth.”).

³⁸ *See supra* note 4.

recipients for nearly a decade. The company has invested heavily in deploying its own fiber network to bring high-capacity connectivity to schools as well as other anchor institutions.³⁹ tw telecom's provision of Ethernet Internet access service to NYC DOE in particular makes broadband available to up to approximately three quarters of a million students in up to approximately 71,000 classrooms throughout New York City.⁴⁰ Using tw telecom's 1 Gbps Ethernet Internet access service, these students and their teachers are able to run bandwidth-intensive educational applications and realize the benefits of online learning.

B. USAC's Failure To Act In A Timely Manner Undermines The Commission's Broadband Deployment Goals And The E-Rate Program.

While tw telecom's participation in the E-Rate program has furthered the Commission's broadband deployment goals, those goals are being undermined by inefficient administration of the E-Rate program. Specifically, as explained in Part II.A above, USAC has not issued FCDLs for NYC DOE Application No. 821325, which has been pending for more than two years, or for Application No. 875253, which has been pending for more than one year. USAC has not provided a formal explanation for the delay in completing its review of these Applications, both of which are still in the "Initial Review" phase of the review process.⁴¹ Nor has USAC provided any timetable for completion of its review.⁴² NYC DOE officials have also reported to tw

³⁹ See, e.g., Letter from Thomas Jones, Counsel for tw telecom inc., to Marlene H. Dortch, Secretary, FCC, GN Dkt. No. 09-51, at 3-4 (filed Dec. 22, 2009).

⁴⁰ See Application No. 875253 at 2.

⁴¹ See Quade Declaration ¶ 9.

⁴² See *id.* ¶ 8.

telecom that they have cooperated fully with USAC's requests for information about the Applications.⁴³

USAC's failure to timely grant or deny these funding applications has several harmful consequences. *First*, it discourages businesses such as tw telecom from participating in the E-Rate program because they have no ability to estimate when they will receive payment for the services they provide. As discussed in Part II.A above, under the contract between the parties, tw telecom cannot seek collection from NYC DOE for the unpaid discounted portion of the cost of services unless and until NYC DOE has received a written notice from USAC denying or reducing the requested E-Rate funding. As of June 20, 2013, that amount totaled approximately \$733,547 for services provided since July 1, 2011.⁴⁴ tw telecom must continue to incur the vast majority of the cost of providing broadband to NYC DOE until USAC issues a funding commitment decision—an event for which USAC has absolutely no estimated timeframe.

Second, USAC's inaction deters service providers such as tw telecom from participating in the E-Rate program by unnecessarily increasing the costs of participation. For example, tw telecom has been forced to allocate time and resources to filing this petition that otherwise could have been used to run its business.

Third, decreased participation from leading broadband service providers such as tw telecom will in turn have a detrimental impact on schools eligible for E-Rate funding as well as the Universal Service Fund more generally. As the Commission has recognized, "[i]f more service providers are viewing and responding to [eligible schools' requests for] proposals, the resulting additional competition should help keep prices lower for applicants and, in turn, require

⁴³ See *id.* ¶ 6.

⁴⁴ See *id.* ¶ 5.

fewer dollars from the universal service fund.”⁴⁵ It follows that discouraging service providers from responding to E-Rate proposals will result in less competition, higher prices, and more dollars from the Fund spent on E-Rate services.

Finally, and more generally, USAC’s failure to reach a decision in a timely manner undermines the effectiveness of the E-Rate program. Separate and apart from the specific benefits that broadband delivers to schools and libraries, tw telecom and other service providers participating in the E-Rate program have a right to timely decisions as to whether the services they provide will be subsidized under the program. USAC’s failure to act deprives tw telecom of that right and harms the effectiveness of the E-Rate program.

C. The Commission Should Direct USAC To Grant Or Deny The Relevant NYC DOE E-Rate Funding Applications Within 30 Days.

The Commission should issue an order directing USAC to complete its review of NYC DOE E-Rate funding Applications Nos. 821325 and 875253 and issue FCDLs for those Applications within 30 days of the release of the order. There is no question that the Commission has the authority to issue such an order. As discussed in Part II.B above, the Commission has repeatedly remanded USAC funding decisions and instructed USAC to “complete its review” of the underlying applications and “issue an award or a denial based on a complete review and analysis” no later than 60 or 90 days from the issuance of the order.⁴⁶ Although those instructions were issued by the Commission or the Wireline Competition Bureau in the context of appeals of funding decisions made by USAC, the Commission’s oversight authority over USAC would be meaningless if the Commission could not direct USAC to act in

⁴⁵ *E-Rate Broadband Order* ¶ 71.

⁴⁶ See *Bishop Perry Order* ¶ 1; *Aiken County Order* ¶ 2; *Brownsville Order* ¶ 1; *Bayfield Order* ¶ 4; see also *Kan-ed Order* ¶ 1; *Macomb Order* ¶ 1; *Bastrop Order* ¶ 2.

this case. Such an outcome would mean that USAC is free to spend years reviewing (or not reviewing) E-Rate applications without issuing funding decisions. Surely, the Commission—which has expressed a desire for efficient and effective administration of the Fund⁴⁷ and placed importance on “the quality of service [USAC] provides to [its] stakeholders”⁴⁸—does not intend such a result.

There is no reason that USAC cannot complete its review of the Applications and release a funding commitment or denial within 30 days. USAC has already had more than two years to review Application No. 821325 and more than one year to review Application No. 875253. The Commission has also issued orders directing USAC to complete its review of dozens of E-Rate funding applications within 60 or 90 days, so USAC should be able to finish its review of the two NYC DOE Applications within 30 days.⁴⁹

IV. CONCLUSION

For the foregoing reasons, the Commission should immediately issue an order directing USAC to complete its review of NYC DOE Application Nos. 821325 and 875253 and release a funding commitment or denial no later than 30 days from the release of the order.

⁴⁷ See, e.g., *Bishop Perry Order* ¶ 23 (issuing additional application processing directives to USAC in order to “improve the efficiency and effectiveness of the Fund”); *id.* ¶ 2 (“[W]e believe that by directing USAC to modify certain application processing procedures . . . , we will provide for a more effective application processing system that will ensure eligible schools and libraries will be able to realize the intended benefits of the E-Rate program . . .”).

⁴⁸ See *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, Notice of Inquiry, 23 FCC Rcd. 13583, ¶ 7 (2008).

⁴⁹ For example, in the *Brownsville* and *Aiken County Orders*, the Commission required USAC to act on 26 and 59 applications, respectively, within 90 days. *Brownsville Order* ¶ 1; *Aiken County Order* ¶¶ 1-2. And in the *Bishop Perry Order*, the Commission required USAC to issue a funding commitment or denial based on a complete review and analysis of nearly 200 applications within 60 days. *Bishop Perry Order* ¶ 1.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nirali Patel", is positioned above a horizontal line.

Thomas Jones

Nirali Patel

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July 3, 2013

ATTACHMENT A

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**DECLARATION OF PAMELA QUADE
ON BEHALF OF TW TELECOM INC.**

1. I am Supervisor, Accounts Receivable, for tw telecom inc. ("tw telecom"). In this role, I have managed tw telecom's provision of Schools and Libraries Program (commonly known as "E-Rate") eligible services for approximately nine years. My responsibilities include, among other things, certifying our customers' Billed Entity Applicant Reimbursement Forms, and filing our Service Provider Initiated Forms with the Universal Service Administrative Company ("USAC").

2. tw telecom is a leading provider of managed services to businesses and large organizations throughout the U.S. Among the services that tw telecom provides are high-speed broadband services to schools, universities, hospitals, and other anchor institutions.

3. The purpose of my declaration is to describe (1) tw telecom's experience in providing E-Rate eligible services to the New York City Department of Education ("NYC DOE"); and (2) how USAC's failure to timely issue a Funding Commitment Decision Letter ("FCDL") on two of NYC DOE's pending E-Rate funding applications has impacted tw telecom.

4. tw telecom provided E-Rate eligible broadband services (*i.e.*, 1 Gbps Ethernet Internet access services) to NYC DOE during the 2010-2011 funding year. On December 2,

2010, USAC issued a FCDL approving NYC DOE's application for E-Rate funding to subsidize the cost of those services. NYC DOE paid the non-discounted portion of the cost of those services and, on July 5, 2011, tw telecom successfully obtained reimbursement from USAC for the discounted portion of the cost of those services.

5. On December 28, 2010, tw telecom entered into a multi-year contract with NYC DOE to provide E-Rate eligible broadband services (*i.e.*, 1 Gbps Ethernet Internet access services) for the 2011-2012, 2012-2013, and 2013-2014 funding years. Pursuant to this contract, tw telecom has been providing these services to NYC DOE since July 1, 2011. Consistent with the parties' practice during the 2010-2011 funding year, tw telecom has been invoicing NYC DOE for the full cost of the services provided and NYC DOE has been paying the non-discounted portion of the cost of the services provided. tw telecom has not been able to seek reimbursement from USAC for the discounted portion of the cost of services provided to NYC DOE since July 1, 2011 because USAC has not issued a FCDL to NYC DOE for the 2011-2012 or 2012-2013 funding years. As of June 20, 2013, the discounted portion of the cost of services provided to NYC DOE since July 1, 2011 was \$733,546.55. Pursuant to the contract between the parties, tw telecom is unable to seek collection from NYC DOE for the discounted portion it is owed until NYC DOE has received a written notice from USAC denying or reducing the requested E-Rate funding.

6. NYC DOE timely filed its Form 471 application for E-Rate funding for the 2011-2012 funding year (Application No. 821325) with USAC on March 22, 2011. NYC DOE timely filed its Form 471 application for E-Rate funding for the 2012-2013 funding year (Application No. 875253) on March 16, 2012. Since each of these Applications was filed, I have maintained regular communication with the NYC DOE employee and NYC DOE consultant that prepared

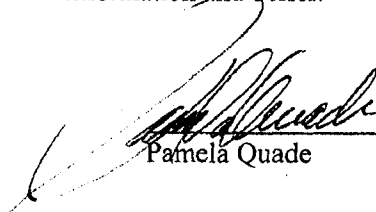
and submitted the Applications. According to these individuals, NYC DOE has cooperated fully with USAC's requests for information in connection with these Applications, but USAC has provided no timetable for issuance of FCDLs to NYC DOE. These individuals also indicated that tw telecom is not the only NYC DOE service provider that is owed the discounted portion of the cost of E-Rate eligible services provided to NYC DOE.

7. On February 26, 2013, the status of Application No. 821325 was listed in the Form 471 Application Status database on the USAC website as "Initial Review." On February 26, 2013, the status of Application No. 875253 was listed in the Form 471 Application Status database on the USAC website as "Quality Assurance 1." On February 27, 2013, I contacted USAC to inquire whether it could provide any additional information about the status of NYC DOE Application Nos. 821325 and 875253 beyond the fact that the Applications were in "Initial Review" and "Quality Assurance 1," respectively. I further asked whether USAC could provide any explanation for the delay in the review of these Applications or any timetable for completing its review and issuing FCDLs. USAC's Schools and Libraries Division responded via email on February 28, 2013 as follows: "We are currently still working to complete our review of these forms so that you can receive a decision. This is not unusual and is not cause for concern. Unfortunately, we are not able to predict how much longer this will take. If any additional information is needed, the contact person that is listed on the forms will be contacted."

8. On May 28, 2013, I contacted USAC via email and asked for an update on the status of its review of the Applications, but I did not receive a response to my inquiry.

9. As of June 28, 2013, according to the Form 471 Application Status database, both Applications were in "Initial Review."

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.



Pamela Quade

Date: 7/1/13